

FILED
IN CLERK'S OFFICE

UNITED STATES DISTRICT COURT - B A 11:58
FOR THE U.S. DISTRICT COURT
DISTRICT OF MASS.
DISTRICT OF MASSACHUSETTS

Civil action no #

JOSE DAVILA

plaintiff

- V -

"KATHLEEN DENNETT", Commissioner
of Corrections,

"MICHAEL MALONEY,
former
Commissioner of corrections

"DIRECTOR" of UNIVERSITY
UMass medical department,

DIRECTOR of DEPARTMENT OF
CORRECTIONS, mental health
prison systems,

"HERBERT B. HERSHKOWITZ, MD,
psych-doctor of the mass
prison mental health department,

"PATRICIA CROFT, MD, psych-
doctor of the mass prison
mental health department,

"ERNEST OSEI-TUTU, MD, medical
doctor of the mass prison
system,

"PRESIDENT" of ELI LILLY
and Company,

"DIRECTOR" of FOOD AND DRUG
Administration (FDA)

Additional defendants forth-
coming.

Defendants

I. PRELIMINARY STATEMENT

I. This action is brought under 42 USC sec 1983, seeking declaratory and injunctive relief along with monetary damages in redress for the cruel, unusual abusive treatment from results of certain dangerous psych-medication "ZYPREXA" and "RISPERDAL" that should had been removed from the drug market or a timely safety warning label that should had notify society that both drugs produce early onset diabetes.

Plaintiff claims because of the defendants actions, his rights were violated under the 8th amendment act United States Constitution and he is entitled to recover relief.

II. PARTIES

II. Jose Davila, is incarcerated at MCZ- cedar junction Mass prison system, and at all times is relevant to the allegations herein.

III. Defendants Kathleen Denney and Michael Maloney, are named defendants in both their individual and official capacity, they are/were employees of the mass/doc and have acted under color of state law in connection with their service to plaintiff.

IV. Defendants, Herbert B. Hershkowitz, Patricia Craft, and Ernest Osei-ZuZu, are doctors that are employed by the UMass medical department, they are being sued in

their individual and official capacities, who are relevant to this allegations.

V. Both defendant "directors" are relevant to this lawsuit, they are responsible for the safe medical treatment of all mass prisoners, and are responsible for their under staff medical employees etc,

VI. Defendant who is the President of Eli Lilly drug Company is relevant to this action, He/she is being sued in their individual and official capacities.

VII. Defendant who is the Director of Food and drug administration (FDA) who is relevant to this action, He/she is being sued in their individual and official capacities.

III. JURISDICTION

VIII. Jurisdiction of the court is founded on 28 USC sec 1331, 1332 and 1343, Authority to award damages and grant declaratory relief derives from 28 USC 2201, 2202 and 1651. This court has pendent jurisdiction over the claims arising under mass law, as both state and federal claims arises from a common set of facts.

IV. Statement of Facts

#1. At some point during plaintiff childhood he was diagnose of having Bi-Polar disorder., and he entered the mass prison system with a sentence of life in the 2nd degree. Jan. 9, 1992.

#2. During plaintiff state incarceration period, he was seen by numerous of psych-counselors and doctors that were employed under the mental health dept.

#3. During the treatment by psych-doctors, plaintiff was prescribe numerous of medications, and in this case, plaintiff was prescribe a dangerous medication called 'ZYPREXA and RISPERDAL' (See- EX: B)

#4. It should be noted that Numerous of medical University researches had conducted studies on zyprexa and risperdal pills, and it was determined that these drugs were known to produce early onset diabetes, severe hyperglycemia and deaths.(EX: A)

#5 As describe in (EX: A, page 4) shows studies dating back to the 90's and yet the (FDA's) had failed to notify the public that these two named drugs could caused diabetes etc.

#6. As describe in (EX: A) the Journal of America Medical association published a letter written by doctor Kollen an FDA medical officer, who issued a FDA's medwatch warning

that Zyprexa) was 10 times more likely to become diabetics, dated. Nov 28, 2001.

#7

#7. From Sept 2001 up until June 2004, plaintiff was still being prescribe the two drugs by doctors Hershkowitz and Craft who are named defendants, who both had full knowledge of the diabetes side effects, or they should had knowledge of any type of side effects when it comes to prescribing medications to patients..

#8. Defendants Eli Lilly and FOA's have known the links to diabetes in results in patient taken these drugs, but yet they failed to notify the public in a timely fashioned, ~~not~~

#9. (Ex: c) dated in Aug/Sent 2003 Shows, Lilly and Company finnally notify the public of the side effects of patients taken these drugs .

#10. In October 2002, plaintiff was diagnose of having "diabetes mellitus" by defendant Tutu (Ex: D) who then prescribe insulin shots (Ex: E)

#11. As describe in paragraph #10 (Review pages 1 thru 8 of Ex:D) that shows the pain and suffering that plaintiff was going through every time he took insulin shots, deft. Tutu claim that plaintiff had diabetes mellitus.

#12. As describe in paragraph #11, It was determined that plaintiff wasn't a diabetic, he only had a high glucose reading temporary that day, but yet deft Tutu prescribe the insulin shots that almost killed him.

#13. As describe in paragraph #12, all deft Tutu had to do was discontinued the two medication "Zyfexa and Risperdal" instead of prescribing insulin shots that had plaintiff going through abusive treatment.

#14. Both directors of UMass and mental Health department have failed to supervise the named doctors when prescribing certain medications.

#15. The Commissioners are the overseers of both medical departments who have meetings together with them in regards to the care and custody of prisoners, both defendants failed their responsibilities.

#16. Plaintiff states that because he was taking these two medications he has developed extreme emotional stress and strains and he has become a diabetic as result of these two drugs.

#17. Plaintiff reserved the right to amend this complaint after the completion of discovery.

V Legal claims

A. Defendants actions as set forth herein constitute Cruel and Unusual punishment in violation of the 8th Amendment to the United States Constitution.

B. Defendants actions as set forth herein constitute deprivation of plaintiff's right in violation of 42 USC Sec 1983 and all defendants knew or should have known about the violations describe in these set of facts.

C. Defendants action stated herein constitute abuse of process, that led to plaintiff suffering emotional others

VI Request for Relief

1. A trial by jury on all facts triable.
2. Award compensatory damages in the amount of \$100,000
3. Award punitive damages in the amount of \$50,000 from each defendant
4. Award reasonable lawyer fees



EX: A

March 20, 2003

Zyprexa linked with Diabetes

Eli Lilly's best selling drug, olanzapine (Zyprexa), originally approved for schizophrenia, then for bi-polar disorder, is prescribed widely. But the drug has been shown to produce early onset diabetes, severe hyperglycemia--and deaths. Adolescents and young adults appear to be at particular risk.

On November 28, 2001, the Journal of the American Medical Association published a letter written by Dr. Elizabeth Koller, an FDA medical officer, Dr. P. Murali Doraiswamy, a Duke University psychiatrist warning that according to FDA's MedWatch data, patients taking either olanzapine or clozapine were 10 times more likely to become diabetic than the general population.

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<http://jama.ama-assn.org/issues/current/full/jit1128-4.html> Vol. 286 No. 20.

Those findings have been corroborated by several other studies. Yet, the FDA has done little to warn doctors and consumers. Patients taking the drug should, at the very least have their blood sugar monitored, but if doctors are unaware of the risk patients are not monitored.

The Baltimore Sun reports:

"Japan's Health Ministry, concerned by reports of two deaths and seven comas, barred doctors last year from prescribing Zyprexa for any new patients with diabetes, and warned them to monitor closely those already on the drug by regularly measuring blood-sugar levels. British drug regulators issued a warning in April."

According to Dr. Doaiswamy, in Japan, a strong, highlighted warning appears at the very beginning of the Zyprexa label. The FDA has not required a warning beyond inconspicuous mention of the possibility of sugar problems in patients who take atypicals.

Public Citizen advises physicians and consumers to look to the Japanese label for the most accurate information. It states:

* Olanzapine is contra-indicated for use in patients with diabetes or a history of diabetes.

* Olanzapine should be used with caution in patients with risk factors for diabetes, including hyperglycemia, obesity or a family history of diabetes.

* Patients receiving olanzapine should be carefully monitored for symptoms of hyperglycemia and the drug should be discontinued if such

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Site of the
Month

symptoms occur. The symptoms of severe hyperglycemia include weakness, excessive eating, excessive thirst, and excessive urination.

* Physicians should educate patients and their family members about the risk of serious hyperglycemia associated with the olanzapine and how to identify the symptoms of hyperglycemia.

See: <http://www.citizen.org/eletter/articles/hyperglycemia2.htm>

ALLIANCE FOR HUMAN RESEARCH PROTECTION (AHRP)

<http://www.ahrp.org>

Contact: Vera Hassner Sharav

212-595-8974

e-mail: veracare@ahrp.org

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THE BALTIMORE SUN

<http://www.sunspot.net/bal-te.drug19mar19.story>

## Risks from mental illness drug not adequately noted, some say

### Studies link Zyprexa to diabetes deaths

By Timothy B. Wheeler  
Sun Staff

March 19, 2003

Rob Liversidge had reason to hope he was on the long road back from the severe mental illness that had derailed his life.

Aided by a powerful anti-psychotic medication, the 39-year-old Silver Spring man planned to resume the government career that his bipolar disorder had interrupted.

But in October, a week before he was to start a new job, Liversidge collapsed and was rushed to a local hospital. Despite doctors' efforts, he went into a coma and died four days later.

"It was like he never had a chance," says his mother, Ellen Liversidge. Her grief about her son's mysterious death turned to anger, however, when she learned that at least 23 other people had died, and hundreds more suffered potentially life-threatening illness, while taking the same medication.

Zyprexa, widely prescribed to treat bipolar disorder and

schizophrenia, has been linked in multiple studies in this country and abroad with diabetes and severe hyperglycemia, a related failure of the body's ability to process sugar. It can quickly lead to coma and death if not discovered and treated soon enough.

Those studies, and actions taken recently by drug regulators in other countries, have prompted some U.S. physicians to call for more prominent warnings to doctors and the public about the potentially life-threatening side effects of this otherwise helpful medication.

"It's clear this is not rare," says Dr. E. Fuller Torrey, director of the Stanley Medical Research Institute in Bethesda, which studies the causes and cures of schizophrenia. "How common it is is not clear yet, but it's very serious."

Torrey contends that the Food and Drug Administration, which regulates the safety of medications, should require a "black-box" warning - with the text in bold type - on Zyprexa's label about the risks of hyperglycemia and diabetes. "There's almost no one who's aware of it out there," he said. "You may be getting deaths of individuals, but no one is putting it together."

An FDA spokeswoman said the agency is reviewing the reports of illness and death, but declined to provide details.

"FDA is evaluating all this information, and we'll make a determination if action is needed," said Susan Cruzan, the spokeswoman. She said regulators are looking at the potential side effects of all anti-psychotic drugs, not just Zyprexa.

The consumer group Public Citizen is considering whether to ask the FDA to require a more prominent label warning for Zyprexa and one or more other anti-psychotic medications that seem to have similar side effects.

"This is a very good drug," said Dr. Sidney Wolfe, executive director of Public Citizen's Health Watch group. But he added: "You could warn people better than what looks like the case right now, and allow the use to be safer."

A spokeswoman for Eli Lilly & Co., which makes Zyprexa, maintains the drug is safe and effective. "No one has yet proved any sort of causality," said Marni Lemons, the

spokeswoman.

Zyprexa has been the Indianapolis-based drug maker's top-selling medication - surpassing even the popular antidepressant Prozac - since it went on the market in 1996. With more than 11 million people taking Zyprexa worldwide, global sales approached \$4 billion last year, Lemons said.

Psychiatrists and other researchers agree that Zyprexa has helped in treating schizophrenia - a disease characterized by incoherent thinking, disordered memory and delusions - and in managing bipolar disorder, in which sufferers swing between moods of elation and depression.

It is part of a "second generation" of anti-psychotic drugs that have come on the market in the past decade or so, which treat mental illness without the jerky movements, facial disfigurement and other side effects of traditional anti-psychotic medications.

Yet there have been reports since the late 1990s noting that patients taking Zyprexa - as well as some of the other new anti-psychotics - seem prone to diabetes and related illnesses.

In July, researchers from Duke University and the FDA identified 289 reports of patients taking Zyprexa who had developed diabetes or hyperglycemia. They tallied 23 deaths from the mid-1990s through February of last year in the journal *Pharmacotherapy*.

Though the researchers concluded that the deaths and the drug were linked, Dr. Robert W. Baker, Lilly's senior clinical research physician, says the evidence is not persuasive. "It's especially hard to know what would have happened to those people on some other treatment or no treatment at all," he said.

Baker noted that Zyprexa's label does mention that both diabetes and hyperglycemia were reported during clinical trials of the drug. They are listed among dozens of "infrequent" adverse effects reported while using the medication.

FDA's Cruzan said the agency did not see any "affirmative evidence" that Zyprexa causes or worsens diabetes before approving the drug in the mid-1990s. "That is still the outstanding question," she added.

Complicating the issue is research showing that more schizophrenics are diabetic or prone to diabetes than the general population, even without taking anti-psychotic medications.

"There appears to be some kind of link, we don't really understand its nature," said Dr. Lisa Dixon, a psychiatrist at the University of Maryland medical school and with the Veterans Affairs Hospital.

But Dixon and Dr. William Carpenter, director of the Maryland Psychiatric Research Center at UM, said there are enough reports linking diabetes with anti-psychotic drugs - particularly Zyprexa and an older drug, Clozaril - to be careful about prescribing it for patients who are already overweight. One of Zyprexa's best-known side effects is weight gain, and obesity can lead to diabetes.

Many who have developed diabetes while taking Zyprexa, like Amanda Yates of Glen Burnie, had no history of it. The 27-year-old insurance adjuster made two trips to the emergency room for dangerously high blood-sugar levels and had to take daily injections of insulin for several months to get her condition under control. Once her doctor took her off Zyprexa, she recovered.

"I'm just very, very lucky," she said.

Japan's Health Ministry, concerned by reports of two deaths and seven comas, barred doctors last year from prescribing Zyprexa for any new patients with diabetes, and warned them to monitor closely those already on the drug by regularly measuring blood-sugar levels. British drug regulators issued a warning in April.

Lilly has been making efforts to alert physicians to diabetes risks in mentally ill patients through company-sponsored seminars, but the firm disagrees with Japan's action, Lemons said. Putting warnings on the drug's label "has the potential to misinform patients and their caregivers, causing them to cease taking the medication."

Rob Liversidge had conquered his mood swings and suicidal thoughts after two years of treatment with Zyprexa, his mother said. Of average weight before he started taking the

pills, he gained up to 100 pounds on the drug. "He didn't feel he had that many choices. He had been on the old anti-psychotics, and he said they made him feel like a robot," his mother said.

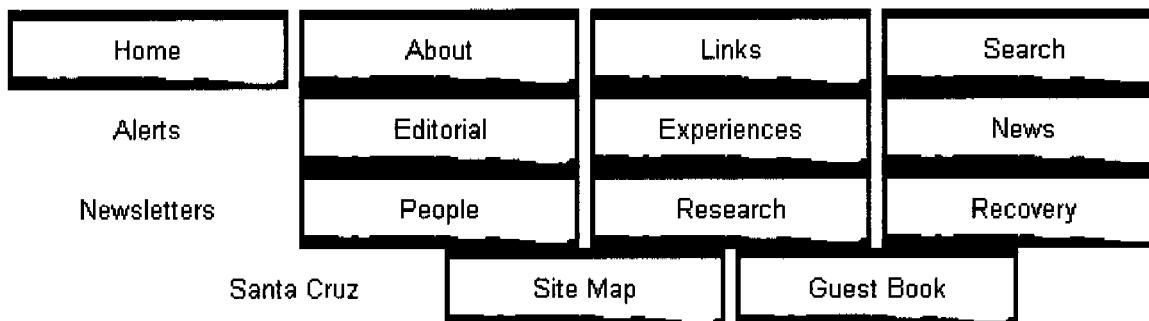
No one had warned him, though, to have his blood-sugar level checked for signs of hyperglycemia, which ultimately killed him, she says.

Ellen Liversidge has hired a California law firm and is considering filing a lawsuit against Lilly. Yet she says her chief aim is to alert others to the potential hazards of the drug.

"I think it helped Rob," she says. "I'm not damning the drug. I'm damning the fact there was no warning on the label."

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Last Updated on 07/07/03 [webmaster@namiscc.org](mailto:webmaster@namiscc.org)



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EXHIBIT B

PAGES I thru XII

medical files

" ZYPREXA + RISPERDAL "

## Ex: B

# **CORRECTIONAL MEDICAL SERVICES / UMASS**

## **PHYSICIAN'S ORDER**

**'PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

NAME Davilla, Jose ID NUMBER W161917 D.O.B. 9-11-75  
INSTITUTION CT ALLERGIES Gladel  
DATE 9-12-01 TIME 23<sup>o</sup>p

| PROBLEM                                                                    | ORDERS                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">9/12/10</p> <p>noted R<br/>Jewell<br/>38</p> | <p>Dipakote 500mg po qhs x 300<br/>     Citalopram 40mg po qhs x 300<br/>     Tyrexia 20mg po qhs x 300<br/>     Tramadol 150mg po qhs x 300<br/>     To Dr Berger-Hershkowitz, Jewish<br/>     &amp; Gen. Hospital 9/12/10<br/>     HERBERT BERGER-HERSHKOWITZ, MD 9/12/10</p> |

**SIGNATURE** \_\_\_\_\_

**Interchange is mandatory unless the prescriber writes the words "no substitution" in this space:**

**PRINT NAME**

三

**DEA Reg. #** \_\_\_\_\_  
(or Controlled Substance orders)

**CORRECTIONAL MEDICAL SERVICES / UMASS****PHYSICIAN'S ORDER****PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

NAME Davilla, Tony ID NUMBER 661917 D.O.B. 9/11/75  
 INSTITUTION CJ ALLERGIES None  
 DATE 1/11/02 TIME 9am

**ORDERS**

MH r/n Depakote 500mg po qd  
 Celesta 40mg po qm }  
 ✓ Zyprexa 20mg po qhs }  
 Fratadone 150mg po qhs }

*K. Mai-Perry*

*Abbie Hillis AMT RCV 1/13/02*

SIGNATURE \_\_\_\_\_

Interchange is mandatory unless the prescriber writes the words  
"no substitution" in this space:

PRINT NAME \_\_\_\_\_

*II*

**CORRECTIONAL MEDICAL SERVICES / UMASS****PHYSICIAN'S ORDER****PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

NAME Daniela Jose ID NUMBER W61917 D.O.B. 9-11-75  
 INSTITUTION EJ ALLERGIES Haldol, Zyprexa  
 DATE 2/12/03 TIME 10am Zyprexa adverse effects of  
Zyprexa(wt gain, poss, b6)

**ORDERS**

VC Haldol Zyprexa allergy

R. Jay Poldrack

Maryann 2/12/03

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"no substitution" in this space:III

PRINT NAME \_\_\_\_\_

## CORRECTIONAL MEDICAL SERVICES / UMASS

## PHYSICIAN'S ORDER

PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

DAVILLA  
 NAME Jose Davilla ID NUMBER W6197 D.O.B. 9/11/75  
 INSTITUTION CJ ALLERGIES Haldol  
 DATE 2/12/02 TIME noon

## ORDERS

r/n Depakote 500 mg po qhs }  
 Celexa 40mg po qhs }  
 Zyprexa 20mg po qhs }  
 Fratadol 10mg 50mg po qhr }

~~1/12/02~~ ~~1/13/02~~ ~~1/14/02~~ ~~1/15/02~~

~~rxed~~

~~not r~~

~~2/13/02~~

~~order not~~

~~taken~~

~~off in time~~

~~chart at~~

~~done at acc~~

~~10-29-02~~

SIGNATURE \_\_\_\_\_

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"no substitution" in this space:

PRINT NAME \_\_\_\_\_

JL

**CORRECTIONAL MEDICAL SERVICES / UMASS**  
**PHYSICIAN'S ORDER**

**PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

|             |              |           |        |        |         |
|-------------|--------------|-----------|--------|--------|---------|
| NAME        | Jose Marilla | ID NUMBER | W61917 | D.O.B. | 9/11/75 |
| INSTITUTION | CJ           | ALLERGIES | Haldol |        |         |
| DATE        | 4/23/02      | TIME      | noon   |        |         |

**ORDERS**

✓/n Depakote 500mg po qhs 2  
 ✓/n Clexa 40mg po qhs 2x90day  
 ✓/n Zyprexa 20mg po qhs 3  
 ✓/n Trazadone 150mg po qhs 3

✓/n Ritalin 10mg po qhs

Note all Rx's 4/23/02 2pm

SIGNATURE \_\_\_\_\_

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PRINT NAME \_\_\_\_\_



**CORRECTIONAL MEDICAL SERVICES / UMASS****PHYSICIAN'S ORDER**

EB

**PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

NAME Jesse Dairella ID NUMBER W 61917 D.O.B. 9/11/75  
 INSTITUTION Norfolk ALLERGIES Haldol  
 DATE 8/2/02 TIME 10<sup>00</sup>A

**ORDERS**

Renew: Depakote 500 mg po q 7/5 }  
 Celexa 60 mg po q 7/5 }  
 Zyprexa 20 mg po q 7/5 }  
 Mazodone 150 mg po q 7/5 }  
 60 days

*Mazodone 150 mg po q 7/5  
Celexa 60 mg po q 7/5*

SIGNATURE PCraft MAInterchange is mandatory unless the prescriber writes the words  
"no substitution" in this space:PRINT NAME PCraft MA

VZ

**CORRECTIONAL MEDICAL SERVICES / UMASS**  
**PHYSICIAN'S ORDER**

PREScription ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

NAME Jose Diazella ID NUMBER W61 917 D.O.B. 9/11/75  
 INSTITUTION N ALLERGIES Naldol  
 DATE 9/25/02 TIME 3<sup>00</sup>P

ORDERS

Review: Depakote 500 mg po qHS  
 Cefexia 60 mg po qHS  
 Risperida 20 mg po qHS  
 Trazodone 150 mg po qHS  
 noted 9-25-02  
 J. Lavelles (PA)  
 5 pm

SIGNATURE RCM

Interchange is mandatory unless the prescriber writes the words "no substitution" in this space:

PRINT NAME RCroftay

VZZ

**CORRECTIONAL MEDICAL SERVICES / UMASS**  
**PHYSICIAN'S ORDER**

PREScription ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

NAME DAVILLA, Jose ID NUMBER W 61917 D.O.B. 9-11-75

INSTITUTION DCCC ALLERGIES Hair ap (tongue)  
swelling)

DATE 11/5/02 TIME 1:30 PM

ORDERS

d/c trazodone (pt non-compliance)

d/c zyprexa

d/c depakote

d/c celebrex

*Note to pharmacist: 11/5/02  
1:30 PM*

SIGNATURE Johanna Shaw, M.D.

Interchange is mandatory unless the prescriber writes the words  
 "no substitution" in this space:

PRINT NAME Johanna Shaw, M.D.

AS 741

VZZZ

# CORRECTIONAL MEDICAL SERVICES

## **PROGRESS NOTES**

NAME: Maria, Jose

ID # W61917 D.O.B. 9/1/75

### Institution

| DATE    | TIME    | NOTES                                                                                                                                                                                          |
|---------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6/12/03 | 11:30am | <del>Pyrolysis (cont.)</del>                                                                                                                                                                   |
|         |         | afford run to Hg(d) (i.e., capture or breakthrough-pre-<br>volume not in Hg at this time); will monitor for antichol. SE's<br><br><del>Addition error 9.5%</del> <del>Hg, Hg, Hg, Hg, Hg</del> |

~~27/3/03 20~~

# CD VISIT

feel flow sheet.

IM i med (Zyprexa) induced DM/HTN.  
taking 8 meds. BP 138/72. &  
diabetic SFS. HbA1c 11.03 = 7.0. Will do  
HTN exp. Cont PM until results of  
next HbA1c are reviewed. May play  
car doc DM co if small. Dose  
Zyprexa x 4-5 mos. ~~gradually~~, MP  
KARA K. ERICKSON, NP

~~✓ IX~~

**CORRECTIONAL MEDICAL SERVICES / UMASS****PHYSICIAN'S ORDER****PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY**

NAME DANUA, Jose ID NUMBER N61917 D.O.B. 9-11-75  
 INSTITUTION OCCC ALLERGIES Honey  
 DATE 2/4/03 TIME 9<sup>30</sup>/A ? zyprexa (diabetes)  
111

**ORDERS**

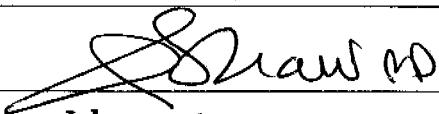
Risperdal 0.5mg po qhs x 2d, then  
 1 mg po qhs. x 60 d

Serax 250mg po qhs x 4d, then  
 500mg po qhs x 60 d ✓

(After 1 wk) start celebrex 250mg po qhs x 7d  
 After 2 wks increase to 400mg po qhs x 60 d

Noted & Sims RN 2/4/03 2 PM

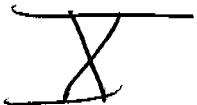
SIGNATURE



PRINT NAME

 Johanna Shaw, M.D.  
 AS 7495403

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 "no substitution" in this space:



## CORRECTIONAL MEDICAL SERVICES / UMASS

## PHYSICIAN'S ORDER

## PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

NAME Wally Jost ID NUMBER WB1917 D.O.B. 9/11/75  
 INSTITUTION CDT ALLERGIES Haldol  
 DATE 3/4/03 TIME 5pm Fippers adverse effects  
not allergic

ORDERS

DC Telexia  
DC DPMRDT

DC Hiperidol

R13 per day 1 mg po qd x 3 days, then  
R13 per day 2 mg po qd x 3 days, then  
R13 per day 3 mg po qd x 84 days.

Proctolin, glycom cholestan, 5607, 5615 off  
CBC & diff  
~~Med. 1211 interval consult~~ Noted Wally Jost  
3/4/03 Noted B. Gaskins, Jr.

SIGNATURE \_\_\_\_\_

Interchange is mandatory unless the prescriber writes the words "no substitution" in this space:

PRINT NAME \_\_\_\_\_

XJ

## UMASS CORRECTIONAL HEALTH

## PHYSICIAN'S ORDER

PRESCRIPTION ORDER - FOR DEPARTMENT OF CORRECTION INSTITUTIONAL USE ONLY

NAME Dave Ha, Tosy ID NUMBER W61917 D.O.B. 9/11/73  
INSTITUTION CJ - DMH ALLERGIES lfa (do)  
DATE 6/10/04 TIME 12:30pm

## ORDERS

DC Depatree when liquid available

Depatree liquid 1500mg po qhs x 90 days

DC Risperdal when liquid available

Risperdal 3mg po qhs x 90 days

Take in 1-2 weeks

cBC id. ff, S&OT, S&PT, VPA level (trough) 7.11 mg

match mmrns 6/10/04 1:30

SIGNATURE \_\_\_\_\_

Interchange is mandatory unless the prescriber writes the words  
"no substitution" in this space:

PRINT NAME \_\_\_\_\_

XIT

EXHIBIT C

Eli Lilly and Company Safety  
Warnings

*Lilly*  
Answers That Matter.

EX. C

Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, Indiana 46285 U.S.A.  
Phone 317 276 2581

March 1, 2004

Re: Safety data on Zyprexa® (olanzapine) – Hyperglycemia and Diabetes

Dear Doctor,

Eli Lilly and Company would like to inform you of important labeling changes regarding Zyprexa (olanzapine). The Food and Drug Administration (FDA) has asked all manufacturers of atypical antipsychotic medications, including Lilly, to add a Warning statement describing the increased risk of hyperglycemia and diabetes in patients taking these medications, including Zyprexa. In addition to Zyprexa, the atypical antipsychotic class includes Clozaril® (clozapine, Novartis), Risperdal® (risperidone, Janssen), Seroquel® (quetiapine, AstraZeneca), Geodon® (ziprasidone, Pfizer), and Abilify™ (aripiprazole, Bristol Myers Squibb and Otsuka American Pharmaceutical). Accordingly, the Zyprexa prescribing information has been updated with the following information:

## **WARNINGS**

### **Hyperglycemia and Diabetes Mellitus**

Hyperglycemia, in some cases extreme and associated with ketoacidosis or hyperosmolar coma or death, has been reported in patients treated with atypical antipsychotics including Zyprexa. Assessment of the relationship between atypical antipsychotic use and glucose abnormalities is complicated by the possibility of an increased background risk of diabetes mellitus in patients with schizophrenia and the increasing incidence of diabetes mellitus in the general population. Given these confounders, the relationship between atypical antipsychotic use and hyperglycemia-related adverse events is not completely understood. However, epidemiological studies suggest an increased risk of treatment-emergent hyperglycemia-related adverse events in patients treated with the atypical antipsychotics. Precise risk estimates for hyperglycemia-related adverse events in patients treated with atypical antipsychotics are not available.

Patients with an established diagnosis of diabetes mellitus who are started on atypical antipsychotics should be monitored regularly for worsening of glucose control. Patients with risk factors for diabetes mellitus (e.g., obesity, family history of diabetes) who are starting treatment with atypical antipsychotics should undergo fasting blood glucose testing at the beginning of treatment and periodically during

Source: News & Business > News > News, Most Recent Two Years (English, Full Text) [\[i\]](#)  
Terms: zyprexa w/10 diabetes ([Edit Search](#))

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*The Indianapolis Star September 18, 2003 Thursday Final Edition*

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The Indianapolis Star

September 18, 2003 Thursday Final Edition

**SECTION:** BUSINESS; Pg. 1C

**LENGTH:** 442 words

**HEADLINE:** Lilly drug to add **diabetes** warning;  
Best-seller **Zyprexa** and rival antipsychotic products must add disclaimer, FDA says.

**BYLINE:** BY JEFF SWIATEK JEFF.SWIATEK@INDYSTAR.COM

**BODY:**

Eli Lilly and Co. will have to post a warning of a **diabetes** risk on its best-selling drug **Zyprexa**.

The Indianapolis drugmaker said Wednesday the warning also has been ordered on other drugs in Zyprexa's class, which treat schizophrenia and other psychotic ills.

The Food and Drug Administration ordered Lilly and other manufacturers of so-called atypical antipsychotics to draw up the warning even though it admitted "the relation between atypical antipsychotic use and diabetes mellitus adverse events has not been completely described."

The agency suggested that the warning on drug labels, read by patients and doctors, should say that the diabetes risk "is not completely understood. However, epidemiological studies suggest an increased risk . . . in patients treated with the atypical antipsychotics."

No deadline for posting the warning was suggested in the FDA letter.

The link to **diabetes** has shadowed **Zyprexa** for several years, prompting at least five lawsuits against Lilly by plaintiffs who accuse the company of failing to warn of the **diabetes** risk.

The fact that the FDA doesn't single out **Zyprexa** for the warning is a positive development for the company and its drug, which competes against about half a dozen brands in the \$8.5 billion global market for antipsychotics.

"Given that the warning is for the whole class of drugs, you can say that it's not as bad as it might have been for Lilly," said Girish Tyagi, a stock analyst at Thomas Weisel Partners in Boston.

Lilly can ill afford a black mark against Zyprexa, which contributed a third of Lilly's \$11 billion in sales last year.

The warning as suggested in the FDA letter won't have to be printed in bold-faced lettering or within a black box, which is the way the most serious adverse effect warnings are displayed,

Source: News & Business > News > **News, Most Recent Two Years (English, Full Text)**   
Terms: **zyprexa w/10 diabetes** ([Edit Search](#))

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*The New York Times, August 25, 2003*

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The New York Times

August 25, 2003, Monday, Late Edition - Final

**SECTION:** Section A; Page 8; Column 1; National Desk

**LENGTH:** 926 words

**HEADLINE:** 3 Schizophrenia Drugs May Raise Diabetes Risk, Study Says

**BYLINE:** By ERICA GOODE

**BODY:**

Three drugs commonly prescribed for schizophrenia and other psychotic illnesses increased patients' risk of developing diabetes when compared with older antipsychotic medications, researchers said yesterday, presenting the results from a long-awaited study of patients treated at veterans hospitals and clinics across the country.

The drugs -- Zyprexa, made by Eli Lilly, Risperdal, made by Jannsen Pharmaceutica, and Seroquel, made by AstraZeneca -- were associated with higher rates of diabetes than older generation drugs for schizophrenia like Haldol, the study found. But the increased risk was statistically significant only for Zyprexa and Risperdal, the researchers said, possibly because of the smaller number of subjects who took Seroquel.

Younger patients, under age 54, who took **Zyprexa** or Risperdal showed the highest risk of developing **diabetes**, the study, led by Francesca Cunningham of the Department of Veterans Affairs at the University of Illinois at Chicago, found.

The results add to a growing number of reports linking Type 2 diabetes to some drugs in the class of antipsychotics known as atypicals.

"These findings are absolutely consistent with everything we've looked at and seen," said Robert Rosenheck, a professor of psychiatry and public health at Yale and an author of an earlier study that found an increased risk of **diabetes with Zyprexa**, Risperdal, Seroquel and Clozaril, made by Novartis.

Experts said the new findings underscored the need for patients who take the drugs and doctors who prescribe them to be alert for the symptoms of diabetes, including increased thirst, frequent urination, increased appetite and rapid weight gain.

Atypical antipsychotics, studies indicate, are less likely than older drugs to produce side effects like tardive dyskinesia, a devastating movement disorder. The newer drugs also appear more effective in preventing relapse in patients with schizophrenia and may be more effective in treating certain aspects of the illness.

More than 15 million prescriptions were written last year for Zyprexa and Risperdal, the two leading atypical antipsychotics, according to industry figures.

Source: News & Business > News > News, Most Recent Two Years (English, Full Text) 

Terms: zyprexa w/10 diabetes ([Edit Search](#))

View: Full

Date/Time: Monday, April 19, 2004 - 9:00 AM EDT

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EXHIBIT D

Plaintiff files of being diagnose with  
diabetes mellitus.

# **CORRECTIONAL MEDICAL SERVICES / UMASS**

## **PROBLEM LIST**

Ex! D

SBCO  
Institution

NAME: Davila Jose

ID # W01917

D.O.B.

9/11/23

## MEDICATION ALLERGIES-

HAIdol

Zyprin → (not an allergy). Zyprin induced hyperglycemia & dyslipidemia.

**CORRECTIONAL MEDICAL SERVICES / UMASS****PROGRESS NOTES**OCCR

Institution

NAME: DAVILLA, Jose ID # W601917 D.O.B. 9-11-75

| DATE    | TIME     | NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/5/02 | 12:40 pm | 1. <u>Psychiatry</u> info<br>MOT current/past: NO si hi delusions<br>Perception: NO current AN, VN.<br>IMPRESSION: 1. PTSD.<br>2. PD NOS (ASPD, BPD)<br>3. ? Borderline intell/fng.<br>4. Med non-compliance.<br>PLAN: As zyprexa, depakote, celera, trazodone<br>and carbamazepine may have caused wt gain,<br>and contributed to weight, this med<br>might well be avoided in future. If pt<br>experiences ↑ agitation & mood lability with<br>either depakote, <u>trazodone</u> . Will monitor.<br>PTE 1-3 wks. |
| 11/9/02 | 12:40 pm | see note 11/4<br>JShaw, M.D.<br>AG 7495408                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 11/9/02 | 12:40 pm | I/m to hsn "I'm feeling sick" "Everything I<br>take Ihsuin I throw up after"<br>BS 278; Vomiting twice a day for one week<br>Sometimes yellow liquid, 4/6 Headache, Nausea +<br>Very thirsty; VS 102/78-64-14-989, Atox3<br>Skin warm + dry - I/m states he has not<br>taken Psych meds in over a week, and also<br>No Zocor or Lipid a/o - I/m also asked<br>to see Mental health today - awaiting<br>Chart to arrive from Moscow - message left at                                                               |

## CORRECTIONAL MEDICAL SERVICES / UMASS

## PROGRESS NOTES


  
Institution

NAME: Jose Danner



ID # W61717

D.O.B. 9/4/71

| DATE    | TIME | notes                                                                                                                                                              |
|---------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/2/02 | pm   | home dip stick: 10/2/02 Color cl - Urine + trace protein PH 5.0 + trace glucose + my ket 2+<br>A. ORf New onset BM<br>① Obesity<br>② Candida Balanitis + negative. |

~~Plan~~ DSS for pt. Cys & purple

- ① C-Pyridone dipstick test
- ② albumin
- ③ Energy up-redund 6/13 w/g 1764
- ④ Abnormal dem. - apply to affected perineal area

~~for DSS~~

④ ↑ ↑ ↑

10/2/02 (pm) Pt arrived to the clinic to draw, less well than (W 23311g)

4/11 → SF 1.034 ↓ ↓ ↓

↑↑ glucose ↑↑ ketones

(fast)

136 / 96 384 76 cl - 264

4.3 28

10/11

VS - 990

HDL - 3)

↑↑ ↑↑

# CORRECTIONAL MEDICAL SERVICES / UMASS

## PROGRESS NOTES

Institution

NAME: Joe Daniels73ID # W61917 D.O.B. 9/11/75

| DATE    | TIME | NOTES                                                                                                                                                                                                                    |
|---------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/2/04 | 1pm  | ① Hypotension > 30 mm Hg - 106<br>Total daily weight<br>report -<br>5:30                                                                                                                                                 |
| 10/2/04 | 1pm  | A. ② New onset dm → not sure of type<br>Type II or I. Has mixed<br>features → ③ Ketosis (carbs)<br>- type I - relative youth (etc adults<br>congs & both. Usually all go to Type<br>Ketosis could also be to Starvation) |
| 10/2/04 | 1pm  | P: ④ Avoid C Pesto de Dipiles here,<br>⑤ For now start pt on INSLIN until<br>picture becomes clear<br>⑥ 2500 Cal ADA diet /Dipesc. Consist                                                                               |
| 10/2/04 | 1pm  | ⑦ Total + <del>topper</del> liquid                                                                                                                                                                                       |
| 10/2/04 | 1pm  | ⑧ Baseline cpk / AST / ALT                                                                                                                                                                                               |
| 10/2/04 | 1pm  | ⑨ Encourage pt to lose fat free = 176 lbs.                                                                                                                                                                               |
| 10/2/04 | 1pm  | ⑩ RCT 1/2%<br><br>An Dray                                                                                                                                                                                                |

**CORRECTIONAL MEDICAL SERVICES / UMASS****PROGRESS NOTES**

OCCR  
Institution

NAME: Nancella, JoeID # 4661917D.O.B. 9/11-75

| DATE     | TIME    | NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/10/02 | 12 noon | M.D. Notes<br>8: Pt says that he feels nauseated when he sees the food & cannot eat.<br>Pt's urine dip does not show any fever. PSBS are 141-16225.<br>O: B.P. 110/80 P-72                                                                                                                                                                                                                                                                                                                                                                                     |
|          |         | Hydration good.<br>Chest lungs clear +/A<br>Heart RRR (+).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|          |         | Ass: Newly Diagnosed Diabetes<br>Plan: Can't go observe in HSV: Pt<br>is advised to eat - FLUC<br>Dr. Kern tomorrow. Pt can be<br>rehydrated on IV fluids.                                                                                                                                                                                                                                                                                                                                                                                                     |
| 11/10/02 | 1:30 PM | 5/6 PM Pt feeling very nauseated, denies vomiting today, refused breakfast stating "I can't eat" I feel sick when I see food. Insulin was held this AM R/T Pt informed nurse he had no intention on eating. Finger stick done BS was 147 @ 7:30 am. Pt refused breakfast and lunch. Then around 1pm he had 1 apple and a milk after speaking w/ Dr. Taisuri. VSS-108-76-68-16-981 Skin warm & dry to touch. Pt states "I will try to eat again later. A-all in comfort related to R/T<br>Pt cont to hold insulin permed? till am flc c MD<br>Tammie Macpherson |

**CORRECTIONAL MEDICAL SERVICES / UMASS****PROGRESS NOTES**

OCCC  
Institution

NAME: José DavillaID # W61917

D.O.B.

9-11-75

| DATE     | TIME  | NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10-29-02 | 930AM | <p>① Seen in psych svcs as new transfer-Teixeira I'm open case on psych meds. I'm happy to transfer to OCCC. Previously here in 1998. At the time, I'm stabbed another I'm 2° gang orders and received 4 yrs DOU time. I'm has renounced his gang affiliation. Discussed I/m's hx of cutting (multiple scars observed in arms, neck) I/m reports recent hx of SI and AH triggered by trauma hx. I/m was on a MH watch 6/02. I/m admits that doesn't always contact MH prior to self injurious behavior. I/m reports no current thoughts or plans to harm self or others. I/m discussed wanting to stop zyprexa, 2° weight gain. Recommended I/m continue med until seen by psychiatrist. I/m made aware of how to access mh as needed. ② Alert, coherent. OX4-Euthymic &amp; some range of affect. Denies SI/HI/AD/VH. Organized. Goal directed. Calm. No risk 2° MMF.</p> <p>③ Refer to caseload + psychiatrist; pnx.</p> <p style="text-align: right;">Oeda Lexena LICSW</p> |

## CORRECTIONAL MEDICAL SERVICES / UMASS

## PROGRESS NOTES

OCCC

Institution

NAME: Javilla RoseID # W61917

D.O.B.

9/11/75

| DATE     | TIME | NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11-10-02 | 2200 | FSBS Insulin on hold. No S/Sx/HbV glycemia. No vomiting noted. Taking some liquids - 110 cc. 120/70-68-16. A/P: Pot. for salt in metabolism. Encourage fluids. Monitor + med abo — K.D.Wiedere                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 11-11-02 | 5am  | S/O "I feel nauseated when I eat + look at food." No vomiting seen, sic T: 98° P: 80" R: 22 B: 16 Skew waent seen A/P Pot for Alter metabolism More to Crc. fluids - Taking sips of H2O from patches c headache - does not cernated <del>Barban needles</del> S: "The food tastes funny." O: Ref. to diet. C/D nausea qf 3-11/80 FS 148. Insulin held. O S/S hypot/ hyperglycemia. (+) BS all 4 quads. Tongue dry & white coating. Enc. P.O. intake. Ate sm amt of mac/cheese (2 slices) bread and 1/2 c juice. O: N/V p meal. Vd x 1. Skin warm + dry. O: Risk for alt in metabolism. P: Cont to monitor. Enc. PO intake — K.D.W. |
| 11-11-02 | 2200 | FSIO: Encouraged to eat + drink. lost weight/lost weight <sup>1/2 kg</sup> took about 1400cc flds po. More sociable walking in room. Ate about 1/3 of supper. V193. Insulin held abo d+o! 120/70-68-16. Denies vomiting, but feels A/P: nauseous. Pot for salt in metabolism. Cont. to mon. + med + enc. flds. K.D.Wiedere                                                                                                                                                                                                                                                                                                         |

# CORRECTIONAL MEDICAL SERVICES / UMAS

## **PROGRESS NOTES**

0ccc

**Institution**

NAME: Davilla, Jose ID # W61917 D.O.B. 9/11/75

| DATE     | TIME | NOTES                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          |      | (11/9/02) Cont'd Outer control; F/m is also a new diabetic<br>of 2 1/2 weeks - MD made aware —<br>A/ Art in comfort<br>P/ see MD orders, continue to monitor I.M., HbA1c                                                                                                                                                                                                                                                       |
| 11/9/02  |      | Addendum - denies ST/HF; contracts for safety — I.M., HbA1c                                                                                                                                                                                                                                                                                                                                                                    |
| 11/9/02  | 1200 | S10° Quiet all shift. Taking liq., but no food. No vomitus noted. q1-64-16-120/70. Urds. Took no insulin. See disch book No off glsx IV glycemic. Pot for alt. in<br><i>(addendum)</i> metformin. Continue to monitor + med x 20. — K) Wieder, RN                                                                                                                                                                              |
| 11/10/02 | 5 am | S10 Quiet all shift keep eyes closed most of time B/P when awoken for VS T- 97.2 BP 118/68 P-68 R-16 Skin warm + dry - No vomitus obs in basement - I/M States he is slightly nauseated Few Sips of H2O taken from bag patches c. headache deeply n/c. Has not voided yet deeply n/c according to I/M. A/P: Monitor for S/S of Port Compromised - pot for altered metabolism - monitor - F/U c. MD in AM - Back and Medication |

EXHIBIT E

# MORRISON MAHONEY LLP

COUNSELLORS AT LAW

250 SUMMER STREET  
BOSTON, MASSACHUSETTS 02210-1181  
617-439-7500

Bruce R. Henry  
Phone: 617-439-7538  
Fax: 617-342-4851  
bhenry@morrisonmahoney.com

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| RHODE ISLAND  | ENGLAND     |
| PROVIDENCE    | LONDON      |

July 15, 2004

Kathleen M. Shea  
Consumer Protection Manager  
Board of Registration in Medicine  
560 Harrison Avenue  
Boston, MA 02118

Re: Jose Davila  
Vs. Ernest Osei-Tutu, M.D.  
Docket No. 04-256  
Our File No. 10015056

Dear Ms. Shea:

This office represents Ernest Osei-Tutu, M.D. with regard to claims against his license by Mr. Jose Davila, an inmate at MCI-Cedar Junction. On Dr. Osei-Tutu's behalf, we deny the charges of Mr. Davila and respond in more detail as follows.

Dr. Osei-Tutu saw Mr. Davila on October 21, 2002. Mr. Davila had been complaining of a penile irritation and of polyuria. The nurse had ordered a urine dipstick and the laboratory technician showed Dr. Osei-Tutu the results which were 3+ glucosuria and 2+ ketones. Mr. Davila reported polyuria, polydypsia, and nocturia. He also reported a large weight gain and was noted to weigh 234 pounds. An examination was done and Dr. Osei-Tutu noted that Mr. Davila had candida balanitis, which can be caused by diabetes. Based on all of the information available to him, Dr. Osei-Tutu made a presumptive diagnosis of new onset diabetes mellitus and ordered lab tests to buttress that impression. Included in the testing were a complete urinalysis, fasting blood sugar, fasting lipid profile, Chem 6, and a C-Peptide Insulin level. Those lab reports would take 24 hours to be returned. Dr. Osei-Tutu suspected a possible metabolic syndrome, hence the order for a lipid profile. He advised Mr. Davila to lose weight, since he was approximately 58 pounds over his ideal body weight.

On October 22, 2002, the laboratory results were returned, with the exception of the C-Peptide Insulin level. Dr. Osei-Tutu summoned Mr. Davila to the Health Services Unit on October 23, 2002, and reviewed the results with him. Since the complete picture was not clear at the time, Dr. Osei-Tutu ordered Insulin, a 2,500 calorie diet, a dietary consultation, and other

**MORRISON MAHONEY LLP**

July 15, 2004

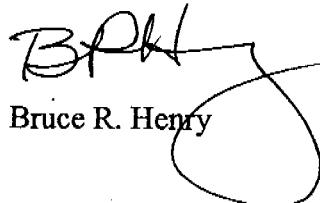
Page 2

testing and medication. Urinalysis showed 2+ glucosuria. Mr. Davila was felt to have some intravascular volume depletion resulting from his osmotic diuresis as a result of glucosuria. He still had 2+ ketonuria; fasting blood sugar was 384; fasting sodium was 136; potassium was 4.3; carbon dioxide was 28; chloride was 96; anion gap was 12; BUN was 10; and creatinine was 1.3. Since Mr. Davila did not have a high anion gap metabolic acidosis on the Chem 6, Dr. Osei-Tutu felt he was most likely a Type II diabetic. To be safe, Dr. Osei-Tutu prescribed an Insulin regimen to be followed until the C-Peptide Insulin level was reported back, which typically took several weeks. Based on Mr. Davila's weight, Dr. Osei-Tutu developed a sliding scale for the administration of Insulin. He placed Mr. Davila on Zocor and Lopid and ordered liver enzymes and a baseline CPK to follow those values while Mr. Davila was on the ordered therapy. A follow-up appointment was scheduled for one week later, on October 30, 2002; however, Mr. Davila was transferred to a different prison on October 28, 2002. Subsequently, Insulin was stopped after Mr. Davila was seen and had his fasting blood sugar levels monitored for some time.

Dr. Osei-Tutu's care from October 21 to October 28, 2002, was appropriate. Mr. Davila's candida balanitis, his lab results, his obesity, and his ancestry all pointed to a diagnosis of diabetes mellitus. Although he was aware that Mr. Davila was taking Zyprexa, Dr. Osei-Tutu did not believe that that psychiatric medication was the cause of the fasting blood sugar of 384 noted in the testing ordered on October 21, 2002. The presumptive diagnosis of diabetes mellitus was reached taking into account all of the various appropriate factors, including the laboratory testing and the fact that Mr. Davila was receiving Zyprexa. Mr. Davila was transferred to another facility within a week of the presumptive diagnosis by Dr. Osei-Tutu, who thus had no further opportunity to evaluate or treat Mr. Davila. The care given by Dr. Osei-Tutu was careful and thorough and comes nowhere near to constituting substandard medical care or professional misconduct. We ask that the complaint be dismissed.

Should you need any further information, please do not hesitate to contact me at this office.

Very truly yours,



B.R.H.  
Bruce R. Henry

BRH/anl